IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/04/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.21823 OF 2000

S. Mani .. Petitioner

-Vs-

1. The Director General,
CRPF, CGO Complex,
Lodhi Road,
New Delhi 110 003.

2. The Inspector General of Police,
Southern Sector, CRPF,
No.12,Mehdhi Manzil, Panjra Hills,
Hyderabad

3. The Deputy Inspector General of
Police, CRPF, Avadi,
Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : Mrs.N.G. Kalaiselvi

For Respondents : Mr.S. Udayakumar, ACGSC

:J U D G M E N T

The facts giving rise to the present writ petition are as follows:-
The petitioner joined service in the year 1984 under Central Reserve Armed Force. On 21.7.98 he had applied for leave as his wife had fallen sick. Thereafter, the petitioner himself fell sick and due to other unforeseen family problems, he could not rejoin duty. In the meantime, the petitioner was declared as deserter. Subsequent representation filed by the petitioner seeking permission to rejoin was rejected. The petitioner has filed this Writ Petition for quashing the proceedings in P VIII-8/98-28-EC.II and for reinstatement in service with backwages.

2. It is stated in the writ petition that before passing the

impugned order, no notice had been served on the petitioner nor any explanation has been sought for. It has been further submitted that the punishment is grossly disproportionate.

3. In the decision reported in 1996(7) S.C.C. 634 (MALKIAT SINGH v. STATE OF PUNJAB AND OTHERS), a Constable employed under the State of Punjab was discharged on the ground that he remained absent from duty for more than one month and nine days and he was irregular in attending to the duty. The absence on one occasion was on account of the fact that he had to attend to his wife, who was ailing.
It was observed by the Supreme Court that

" . . . The explanation offered for the absence on the third occasion was that since in his wife's delivery certain complications had arisen, he had to attend to his wife and so he could not be present. The medical certificate in that behalf was produced. In view of the medical certificate, it cannot be said that he had deliberately absented from duty. On the previous two occasions, the absence for one day and in another year for on night cannot be considered to be regular absence so as to reach the conclusion that he had not proved his efficiency. It is true that discipline is required to be maintained. However, absence may sometimes be inevitable." (emphasis supplied)

4. In the Division Bench decision of this Court reported in 1997 WLR 626 (D. SAINSON v. THE CHIEF SECURITY COMMISSIONER, RAILWAY PROTECTION FORCE, MADRAS AND 3 OTHERS, an employee under Railway Protection Force was removed from service on account of unauthorised absence from duty for 45 days. It was observed :

" . . . There cannot be any second opinion that the appellant who belongs to the disciplined service is to behave and conduct himself in a disciplined manner. Admittedly he had failed to conduct himself in a disciplined manner by not intimating the authorities and unauthorisedly remained absent for 45 days. We are of the view that for such an unauthorised absence, the punishment of withholding of increments for a period of three years with cumulative effect and the nonpayment of back wages would be just, reasonable and fair in the facts and circumstances of the case. In our opinion, the order of the Chief Security Commissioner dated 17.5.1995 in treating the period from 21.3.1981 to 22.5.1995 as non qualifying service is not only disproportionate for the offence alleged against the appellant but also harsh and excessive. Hence, this part of the order alone is set aside."

5. In the counter affidavit it has been indicated that after availing leave, the petitioner did not rejoin duty. A letter was sent in his home address through registered post to report back for duty, but the said letter came back undelivered. Subsequently a letter was received from the petitioner stating that he was mentally upset and could not report for duty. Thereafter when the petitioner failed to turn up for duty, he was declared deserter by order dated 13.11.1998. A copy of the order was sent in the last known address, but the same came back unserved with an endorsement that the individual was not available. Thereafter a departmental enquiry was ordered

and articles of charge were framed. Such communication was also received back on the ground that the person had vacated the quarters and could not be delivered. The enquiry proceeded ex parte and subsequently a final order has been passed.

6. From the narration of events, it is apparent that the proceeding was conducted ex parte. Even though registered letters had been sent, they came back unserved due to some reason or other. However, the fact remains that at no point of time the articles of charge were served on the petitioner. If the respondents failed in their attempt to serve the notice through registered post, appropriate notice could have been published in newspapers. The registered letters were returned unserved due to absence of the petitioner. It is not the case of the respondents that on any occasion the petitioner has refused to accept the registered letters. In the above circumstances, it is obvious that the proceedings were conducted ex parte even though the petitioner was not aware of the proceedings. Therefore, in the interest of justice, the impugned orders are required to be quashed and de novo enquiry may be held after serving notice. Pending such de novo enquiry, it would be open to the respondents to permit the petitioner to rejoin. If ultimately the delinquent is found guilty, while considering the question of punishment, the observation made in the decisions cited may be kept in view.

7. Subject to the aforesaid observations, the writ petition is allowed. There will be no order as to costs.

Index : Yes
Internet : Yes / No
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To

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